से अनुरोध करेगी कि वह अपने यहां जल्दी से जल्दी ऐसा बिल बनायें और पुस्तकालयों के रख-रखाव, गांवों में पुस्तकालयों के फैलाव और पुस्तक संस्कृति के विकास के लिए काम करे।

SHRI KARTAR SINGH DUGGAL: Sir, in view of the assurance given by the hon Minister, I withdraw my Bill.

The Bill was, by leave, withdrawn.

THE CONSTITUTION (AMENDMENT) BILL, 1996 (TO AMEND ARTICLES 124, 217, ETC.)

SHRI V.N. GADGIL (Maharashtra): Sir, I move:

> "That the Bill further to amend the Constitution of India, be taken into consideration."

I have brought this Bill as a kind of a way out for a controversial issue which has arisen, namely, about the appointment of judges. I will briefly explain the background. Our framers of the Constitution recognised that independence of judiciary is very necessary in the parliamentary system of Government. Therefore, they introduced two articles in the Constitution, that is, articles 124 and 217. These articles provide for appointment of judges of the Supreme Court and the High Courts. The procedure is established by these articles, that proposals initiate from the Supreme Court of the High Courts and certain procedure is followed and ultimately the decision is taken to appoint or not to appoint. Now, the crucial word in these two articles is "in consultation with". The question arose in the Constituent Assembly whether. "consultation" means consent. So, two amendments were moved by hon. Member, Shri B. Pokhanna *sahib*, that is, amendment Nos. 1818 and 2584 to the effect that the word 'consults' be substituted with the word 'consent', so that without the consent of the Chief Justice nobody could be appointed and the exclusive power be given to the Chief Justice.

Now it is very necessary to recall that the Constituent Assembly rejected both these amendments. Therefore, the intention of the Constituent Assembly was that the Chief Justice should be consulted and it is not obligatory to have his consent for appointment. When Dr. Ambedkar spoke there, he said, 'with regard to the question of concurrence of the Chief Justice, it seems that those who advocate the proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgement. After all, Chief Justice is a man with all his failings all the sentiments and all the prejudices which we, the common people have. And I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day, I, therefore, think that that is also a dangerous proposition.' This is what Dr. Ambedkar said. After this, this question arose in two cases in the Supreme Court. One was in 1982, the *S.P Gupta Versus Government of India* and the other in 1977, *the Sakhalchand Seth* case. Both the times, the Supreme Court said that 'consult' does not mean consent or concurrence. Mere consultation: It is not binding. So, the position was made clear. Unfortunately, in 1993, the delicate balance which was skilfully introduced by the Constitution makers between the Judiciary, the Executive and the Legislature, that is, the Parliament was disturbed by the Supreme Court. They gave a majority decision. Nine judges Bench said that 'consult' means 'consent' and without the approval of the Chief Justice nobody could be appointed. I have practised law for nearly 30 years in the High Court and the Supreme Court. I have great respect for the judges. But I am not going to diefy them. They are also human beings like us. And the judgement from their side is based on distrust of the Parliament and the Executive. And the specious argument is that, if things are left to the Executive or the Parliament,

politics will come in, as if politics does not come in the present system. I do not want to create disrespect for courts. But I have seen judges. There is a lot of judicial politics in appointments—regional feelings, linguistics feelings; caste considerations. There is a High Court in the South where they manage in such a way that for years together the Chief Justice will be from one community. Judges themselves have done it. There is another High Court in the North, opposite which there is an Aggarwal *Pathshala.* But so many judges of the same community got appointed, that now that High Court itself is called an *Aggarwal Pathshala.* This is the present situation. It is not free from politics and to say that if the Executive or the Parliament is given the right to select judges then politics will come in. I do not accept that. Why this distrust? Why this distrust of politcians, Parliament and Executive? Nowhere in the world will you find a system where judges will themselves decide as to who will be the next judge. This is perpetuation of oligarchy; judges will themselves decide who will be the next judges. The Government will have no say; the Law Minister will have no say; the Parliament will have no say, they themselves will decide. This violates the basic principle of natural justice, that you cannot be the judge in your own cause.

They are a party to this controversy, and they themselves are deciding, "What we decide is the ultimate. Nobody can have any say." This is a proposition which no Parliament should accept.

Recently, there has been the theory of judicial activism. I blame Parliament and the executive for this. We allow them space, and they encroach. Things have come to such an absurd, ridiculous extent that they will decide who should get a gas coupon and who should get a telephone connection. They are sometimes acting like a Municipal Commissioner giving order, "Clean the street." This is so-called judicial activism. Therefore, the time has come for Parliament to assert itself and the executive to assert itself. In what way can it be done? I think it is necessary to change the system of selection of Judges. For that purpose, a commission is necessary. This is what I have proposed in my Bill.

As I said, nowhere in the world do you find a system where Judges alone decide who will be the next Judge. Take, for example, the United States. There selection of Judges is a purely political process. The Supreme Court or the Judges of the Supreme Court and the Chief Justice are not even informed, much less consulted. The American President proposes a name. It goes to the Senate. If the Senate approves it, the man is appointed as a Judge. They have a good thing. It is a very open system. A person who is proposed to be appointed has to appear before the Judicial Committee of the Senate. He is cross-examined, grilled. All his antecedents are found. He is totally exposed. All kinds of lobbying goes on.

I have got an extract from a book, titled, "Combat." It has been written by a Senator who mentions how he lobbied for the appointment of a person as the Supreme Court Judge. Very facinating. What did they do? They went to the Chief of Staff in the White House. They went to the Chairman of the Judicial Committee. Both of them went and personally met 99 Senators. They convassed like this. All politics. Ultimately the man was appointed. The process is such that TV cameras are brought. The house was surrounded. They tried to find out if there was anything wrong in his antecedents. A newspaper wrote that he was a gay person. The Senator told the journalist, "I will give the names of women with whom he had relations. So, he is not a gay person". They go to that extent and convass and lobby.

Secondly, the American President normally selects a person from his own party. I have got the statistics. I could get the statistics up to 1987. It is seen that except nine persons, all others were belonging to the party to which the Presi-

dent belonged, whether Republican or Democrat. Although the rest did not belong to their parties, their views and their general ideology were those of the President himself.

Then, caste considerations, religious considerations, linguistics considerations etc. weigh more than the merit of the person. Up to 1987, 104 Judges of the Supreme Court of America were appointed; 45 belonged to what is called the "national upper caste." and 48 belonged to the local elite. This is the cast composition. Then, out of 104 Judges, 89 were Protestants, only six Catholics, only five Jews and only two blacks.

So, (WASP) White Anglo-Saxon Protestants dominate the Supreme Court of America, and yet nobody says that the Supreme Court of America is partial; it is not independent. The members of our Bar, unfortunately, are not prepared to trust Parliament. They wax eloquent about the independence of the Supreme Court of America. Well, this is the position of the Supreme Court of America. It is totally political.

In England, it is very peculiar. England is supposed to be a great democracy. One of the bad legacies of the British rule is that we have some very wrong notions about the BBC and about the British judges. We say they are very independent; they are almost super-independent. If one reads the literature on politics of judiciary in America and England like John Paris's "Under My Wings", or Judge Pickles, they will learn the kind of things that go on in the judiciary in England. There is an instance. I don't think India has such an instance. In England, Lloyd George said to a person: "I will appoint you Chief Justice on the condition that you give me an undated letter of resignation." It was given. Such a high British judiciary; and an undated letter of resignation was given to Llyod George! And one fine morning, the Chief Justice came to the court expecting his attendant to put his gown on him. The attendant told him: 'Sir, I have read in this morning's *Times* that you have resigned'. He was not even informed. Still, the British judiciary is supposed to be above politics!

As far as the British are concerned, three factors guide the selection process. They are: interest of the State and the preservation of law and order; Protection of property rights; and Promotion of certain political views normally associated with the Conservative Party. This is how Judges come to be appointed in Britain. They are not appointed by the Chief Justice. There is no recommendation of the Chief Justice. The proposal comes from the Lord Chancellor, who is the head of the Judiciary. But, at the same time, he is the Minister of the Crown, a Member of the Cabinet. He decides. Some feeble studies are there to show what kind of politics goes on there. Deep studies are not available because the British, who claim they are for freedom and openness, have passed a Data Protection Act, 1984, under which no file regarding the appointment of judges can be shown to the public. Nobody knows how the process goes on and how the Lord Chancellor appoints. It was alleged that politicial considerations come in. Lord Salisbury, who was the Prime Minister, wrote to Lord Halsbury: 'Yes, politics is there.' Why? He said, 'judicial Salad requires both legal oil and political vinegar.' So, politics must come into the appointment of judges. As I said, not many studies are available as far as the British system is concerned, because of the Data Protection Act, but normally an ex-MP belonging to the conservative Party has a very good chance of being appointed a judge of the High Court or Supreme Court of England.

Our Law Commission, in its 124th Report, have said: Same is the system in Australia. In Australia, the appointments are, in substance and reality, by the Cabinet. In Canada, the power to appoint Judges undoubtedly vests in the Executive.

So, in all democratice countries with parliamentary system, the appointment is done by the executive; and Judges have hardly any role to play except being consulted at the most. Therefore, to say that the Parliament and the executive cannot be trusted because independence of judiciary would be lost is a proposition which I don't accept. After all, what is independence? According to my experience, the so-called independence of Judges is a myth. Sir, honesty, I don't doubt. But they have their own views. I had studies at the London School of Economics. We had a professor by name Laski. Prof. Laski used to say, "a judge's mind is not a legal slot machine or a weighing machine that when a person puts a coin into that machine, the card comes out showing the weight. It passes through his mind, his prejudices, predilections, his likes and dislikes, his philosophy of life, the inarticulate major framing gets reflected in his judgement." They are not at all independent. He used to tell us very interesting stories. Before the Second World War, London was divided by the Thames River. On the one side western and on the other side eastern. On the western side, comparatively better of people used to live. On the eastern side poor people used to live. Some young boys from the western side on a rag day used to create a lot of mischief. They threw stones. They broke walls in order to collect money for the patients of T.B., cancer and all kinds of things. They were arrested and produced before the Magistrate. The Magistrate belonged to the same caste, to the same set of society. So, he used to say, "Oh! well, they are exuberant, over-entausiastic young boys. I leave them off with a warning." When the boys of same age from the eastern side of the river, poor people's locality created the same mischief, they were arrested. They were produced before the Magistrate. Then, what happened? Prof. Laski used to derscribe it very beautifully, "Solemnly he sat and gravely he declared,": "These unsocial tendencies are increasing in the society. I sentence them to three months' rigorous imprisonment." Therefore, Prof. Laski used to put it humourously! "It is important in London on which side of the river you commit the crime. Punishment depends on that."

Therefore, we have seen in India this so-called independence of judiciary. A Chief Justice who delivered one kind of judgements resigned from his post and contested the Presidential election. Sir, I am not saying something shocking. But I came to know from reliable sources that for more than 100 years Judges of the Mumbai High Court take lunch together and discuss things. One of the Judges told me—when the Shah Commission was going on—about another Judge who rose very high in the judiciary, had commented, "What is this nonsense of Shah commission? Bring that lady, Indira Gandhi to Chandni Chowk and whip her." I was shocked. Could Indira Gandhi get justice from that Judge. Well, we say Judges are a political, they have no political views. They are not dishonest. What I am saying is that their views get reflected in judgement. So, in that sense all judgements are not so independent or so objective. On that ground to deny any say to the Parliament or to the executive in the selection of Judges would be wrong.

Sir, I have already mentioned about what happens in America. There the factors that weigh have been summarised by three academic studies. The selection of Judges of the Supreme Court in America is influenced by the three factors: (1) Personal friendship of the President; (2) Need to maintain a balance in the Supreme Court and (3) Political and ideological compatability of the nominee. In other words, his philosophy of life must be in tune with the philosophy of life of the President.

So, all these instances of various countries show that politics does play a part in the appointment of judges and there is nothing wrong. In America,

judges are known by their appointments—nixon nominee, Eisenhower nominee, etc. This is how judges are described, in pure political terms. Just because he is appointed by a political President, it does not follow that he will become subservient to him. They become very independent. Eisenhower was asked, after completing two terms, "In ten years, did you commit any error?". He said, "Yes. I committed two errors." "What are they?. His reply was, "They are sitting in the Supreme Court"! So, just because a person is selected on political grounds, it does not follow that he ceases to be an independent judge. Therefore, this wrong notion should be removed. Therefore, I have proposed in my Bill—I am not very adamant on this: this is only my suggestion—a Judicial Commission. I have suggested that in "its composition, there will be the Chief Justice of India who will be the Chairperson, two Judges of the Supreme Court next to the Chief Justice in seniority, a senior Member of Parliament with legal background to be nominated by the Speaker of the Lok Sabha and the Union Minister of Law and Justice. Some such composition is necessary for this Judicial Commission. It should be left to that Judicial Commission to decide about appointment, transfer and promotion of Judges and it should not be left exclusively to the Chief Justice or exclusively to the Government. Parliament, Government and Judiciary, all must be represented in that composition.

The other suggestion I have is this. If there is one institution which is not answerable, responsible or accountable, that is the judiciary. We are all responsible to the electorate, the Government is responsible to Parliament, M.Ps. are responsible to the electorate. But one institution, the judiciary, is not accountable, responsible, to anyone. Therefore, my suggestion to the Law Minister would be this. In some of the States in America, they have what is called a 'Judicial Performance Commission Some such method should be adopted here. Here, impeachment is, no doubt, one way out. But it is almost impossible. So, let us delete it and, instead, institute Judicial Performance Commissions which will monitor, to which the judges, the judiciary, will be answerable, accountable and responsible. It is only then the balance in the system will be ensured. Otherwise, judicial activism will go unchecked and may, conceivably, degenerate into judicial terrorism. Well, from the way things are going, unless it is checked, unless controlled, unless Parliament asserts itself, I think, this trend is dangerous and it may aggravate the situation. Therefor, I request that my Bill should be accepted by the Law Minister and the Judicial Commission and the Judicial Performance Commission, both, should be appointed.

With these words, I commend the Bill to the House. Thank you.

The question was proposed.

DR. BIPLAB DASGUPTA (West Bengal): Mr. Vice-Chairman, I rise to speak first with a word of apology. My learned friend Mr. Gadgil has given us a very entertaining exposition of the views he is holding on this particular issue and I cannot come anywhere near him in comperison, in terms of the anecdotes he has given, in terms of the stories he had in command, ... In terms of resources he consulted. I decided to speak on this Bill only five minutes ago when my arms were twisted by somebody from the Government-side. While I agree with the main thrust of the Bill, that is, setting up of the National Judicial Commission, I have some differences with my learned friend, Shri V.N. Gadgil, about the way in which he has argued. I will come to that. I suggest a slight change in the composition of the National Judicial Commission, which I will place before him for his consideration. The way Mr. Gadgil has spoken, it might give an impression that we are proposing the setting up of the National Judicial Commission to clip the wings of the

Judiciary when the Judiciary is exceeding its limits and doing things which are not in the national interest, and so, we must do something to put them in their proper place. That is the kind of thrust which was there in his argument, not so much in the Bill. I would rather take the view that we will be as concerned as anybody in the Judiciary, about the autonomy of the Judiciary. We want to uphold the independence of the Judiciary. All that we are trying to do is, to strengthen the autonomy of the Judiciary by making it easier for them to function within a certain defined framework. So, there is a slight difference in the way in which we are looking at the subject. When Mr. Gadgil was speaking, he has made a reference to the London School of Economics. Obviously, he was senior to me. But I have also been through the same drill. I have also seen both sides of that particular river. (*Interruptions*) Mr. Gautam, you should actually go to the London School of Economics and come back and join us. I was a teacher there. But it does not matter. I need not give my bio-data here. You can get it from the WHO's WHO. Probably, it has not been brought out in the WHO's WHO. His stories about Llyod George were very interesting. But I can relate twenty other stories about Lloyd George, who was a very funny kind of character, a very interesting personality. There were many things about Lloyd George. But he was not a typical Englishman. So, by relating stories about Lloyd George, he has proceeded with his argument. That was not a good argument. Similarly, all the problems and vices associated with the Judiciary, can be associated with any profession. I am an economist. The economist comes in all shapes, in all sizes and in all colours. The politician comes in all shapes, in all sizes and in all colours, So, we should not take a holier than thou attitude that the appointment of judges is politically manipulated, judges can be biased, judges can be partial and all these things. All these things are true. But this is also true of us, the people who make laws for the country; this is true for the doctors, this is true about the accountants, this is true for all the professions. So, why should we blame the Judiciary for this particular issue? I am not sure about it. But the point is that one should try to de-politicise the appointments in the Judiciary. That is the main thing. We should take into account the fact that no man is ever capable of going beyond his own prejudices. That is true. But a man of integrity will try to do justice; he will try to be fair. That is what we want. So, the way Mr. Gadgil has argued his case was not good. If you ask me, I can tell you all kinds of stories that I have heard in India. The Chief Justice of the Supreme Court was appointed by superseding many other judges. It had happened in India. How are the political appointments made? This is not the occasion to discuss all these things. But this does happen in India. All politicians have been doing the same thing for the last fifty years. So, why should we make a reference to what has happened in America, what has happened in London? It also happens here. That is true. So, this is not the issue. The issue is: How will you ensure the autonomy of the Judiciary so that they operate within a certain framework? This is what I am interested in. Now, in our Consititution, there is a certain balance between the Executive, the Legislature and the Judiciary. This balance is, sometimes, maintained and, sometimes, not maintained. During the nineties, the balance went in favour of the Judiciary. Why? Because, the other two organs of the State did not perform their duty; the Legislatures did not perform their duty, the Executive did not perform their duty. There was a serious allegation about corruption at the highest place. There were serious allegations about hawala and many other things, but the Executive did not try to bring those things in time before the Court. There was an attempt to suppress the information. As a consequence, what had happened? When the Judiciary took up a few of these cases on its own, the

Judiciary made an immediate impact on the people, and the people accepted that the Judiciary had performed a role which the Legislatures did not perform, which the Executive did not perform. There is now a tilt of balance in favour of the Judiciary. It is largely because of the acts of omission and commission on the part of the Executive and the Legislatures. What I find good in this Bill is this. Up till now, there was some arbitrariness in the way in which appointments and transfers were made, and all that. That arbitrariness has to go one way or the other. What Mr. Gadgil is suggesting will go a long way in removing that arbitrariness. Here, we have not done anything to streamline the powers of the Judiciary, Actually, we have put it in a certain format, in a certain framework,—that is very useful—so that nobody can say that the Chief Justice has appointed somebody who is close to him, or there is an appointment in favour of the relatives or the cronies, and all that. That cannot be said. At the same time, we must be careful to ensure that the political bias does not come in the way of transfer or appointment of judges. What is stated in article 307A(3), which relates to the composition of National Judicial Commission, is "the National Judicial Commission shall, (a) for making recommendations as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and as to the transfer of a Judge from one High Court to any other High Court, consist of (i) the Chief Justice of India, who shall be the Chairperson of the Commission." Nobody would disagree with that. "(ii) two Judges of the Supreme Court next to the Chief Justice of India in seniority." I don't think anybody will disagree with this. Then you have two other Members. "(iii) a senior member of Parliament with legal background to be nominated by the Speaker of the Lok Sabha, and (iv) Union Minister of Law and Justice. Here, I don't agree." You have two Judges and two Members from the Parliament. In the case of Members of Parliament, both may be from the same side. If you want to have these provisions, I suggest a small amendment, that a senior Member of Parliament belonging to the Opposition shold be there. Then you have said "Union Minister of Law and Justice". So, the Government will be represented by the Minister. Sir, the Parliament can be represented by a Member of the Opposition, not by a Member of the Treasury Benches. In that way, we can bring a balance in the composition of the National Judicial Commission.

SHRI SANGH PRIYA GAUTAM: There is a logic in it.

DR. BIPLAB DASGUPTA: In that way, you have a Commission where there will be some plurality in decision-making, not everyone speaking in the same voice. You have the Judiciary there, you have the legislature there, you have the Government there. All the three wings are represented in one way or the other. So, you must ensure plurality which is the basic essence of autonomy of the Judiciary. That you can ensure through this small amendment. I can put it in writing, if you want. If it is going to be voted, I will put it in writing. Usually, in these things we don't go in for voting. So, I don't think there is any need to put it in writing. My friend, the Minister of Law, is sitting here, and I think he is supporting the Bill. Mr. Gadgil, my senior colleague, is also here. I think he will take note of the suggestion I am making and make the necessary changes. The important thing is to ensure that the Judiciary do not get the message that we are hostile to them. Certainly, we are not hostile to them. Judiciary is a very important constituent of our system. It is one of the three major organs of the Consitution. Sometimes, the balance goes down on one side and, sometimes, the balance goes down on the other side. Sometimes, the judiciary is to be blamed and, sometimes, we are to be blamed for this. Let us not start blaming each other. The important thing is to see that the auton-

omy of the judiciary is within a certain framework. Thank you.

श्री संघ प्रिय गौतम (उत्तर प्रदेश): उपसभाध्यक्ष महोदय, मेरी पार्टी, भारतीय जनता पार्टी ने अपने चुनाव घोषणा पत्र में एक राष्ट्रीय न्यायिक आयोग की स्थापना की बात कही थी और माननीय गाडगिल साहब ने इस विधेयक के पीछे जो उद्देश्य हैं, उसके पहले ही पैराग्राफ में कहा है कि भारत सरकार की ऐसी नीयत है, वह एक राष्ट्रीय न्यायिक आयोग की स्थापना करना चाहती है। मैं गाडगिल साहब को बधाई देता हूं कि हमारी पार्टी के घोषणा पत्र के विषय और सरकार की नीयत कार्यान्वित करने में उन्होंने पहल की। वह बधाई के पात्र हैं और मैं आपके इस विधेयक का समर्थन करूंगा। मान्यवर, भारतवर्ष कृषि प्रधान देश है। यहां की अर्थव्यवस्था कृषि पर आधारित या कृषि से संचालित होती है। भारतवर्ष धर्म प्रधान देश है। यहां व्यक्ति का जीवन, उसके सारे संस्कार धर्म पर आधारित या धर्म से संचालित होते हैं। भारत जाति प्रधान देश है। इस देश का समाज जातियों से संचालित होता है और जब समाज जातियों से संचालित होता है तो समाज की रोजी, रोटी, कपड़ा, मकान, शिक्षा, दवा, सुरक्षा, न्याय, सम्मान, समाज का धन, धरती, जमीन, जायदाद, कल-कारखाने, कोटे, लाइसेंस, परमिट, एजेंसी, दुकान, मकान फ्लैट, प्लाट, शिक्षा, दीक्षा, शासन, प्रशासन—इन सबमें भागीदारी जातिगत आधार पर विभाजित होती है और यह भारतवर्ष का इतिहास रहा है। यहां पर अधिकारों की प्राप्ति अधिकारों से अलगाव जातियों के आधार पर रहा है। इन बातों को दृष्टिगत रखते हुए हमारे संविधान निर्माताओं ने जब संविधान का निर्माण किया तो उस संविधान की जो स्पिरिट है, जो रूह है, उसके दो पहिए हैं। एक है, इस देश का समूचा विकास और दूसरा, देश का कल्याण, विकास पिछड़े क्षेत्रों का और पिछड़े वर्गों का और कल्याण तथाकित हैवना ट्स का—जिनके पास यह चीजें नहीं हैं। इसलिए हमारे देश में विधायिकी जितने कानून बना रही है उसका दृष्टिकोण विकास और कल्याण की दिशा में होना चाहिए। इस देश की कार्यपालिका जब कभी भी किसी भी कार्य का कार्यान्वयन करे तो उसके सामने देश का विकास और कल्याण होना चाहिए। ठीक इसी तरह से न्यायपालिका जब किसी भी कानून का अनुवाद करे तो उसका दृष्टिकोण भी विकास और कल्याण की दिशा में होना चाहिए। मैं दुख के साथ कहना चाहता हूं कि जब-जब इस देश में इस पार्लियामेंट ने प्रोग्रेसिव लेजीस्लेशन बनाए, आम तौर पर न्यायपालिका ने उनको असंवैधानिक ठहराया या उनके विपरीत अपने निर्णय दिये। जब से जस्टिस वी०आर० कृष्णा अय्यर, जस्टिस भगवती और उनके बाद कुछ सर्वोच्च न्यायालय के न्यायाधीशों का अभ्युदय हुआ और वह सर्वोच्च न्यायालय में आए, उसके बाद विकास और कल्याण की दिशा में हमारे देश के कानून अनुवादित हुए और इसीलिए उसका लाभ भी यहां के पिछड़े और हैवना ट्स लोगों को गया। न्यायपालिका के निर्णयों में बहुत से उदाहरण माननीय गाडगिल साहब ने दिये। मैं एक निर्णय जिसे सब लोग जानते हैं उसे उद्धृत करना चाहता हूं। विप्लवदास जी मैंने भी आपकी बात सुनी थी, आप भी मेरी बात सुनिए। मैंने कमेंट भी किया था विप्लवदास जी आपने इंग्लैंड में शिक्षा पाई है, कम्युनिस्ट हो यह भी एक विडम्बना है। आप मेरी बात सुनिए। जब श्री विश्वनाथ प्रताप सिंह प्रधान मंत्री थे उन्होंने वी०पी० मंडल आयोग की सिफारिशों में से एक सिफारिश लागू करने की घोषणा की थी जिसका अन्य पिछड़ी जातियों से संबंध था। इस घोषणा को, इस आदेश को जो कि एक एक्जीक्यूटिव आर्डर था माननीय सर्वोच्च न्यायालय में चुनौती दी गई और वह मुकदमा इन्दिरा साहनी बनाम भारत सरकार एवं अन्य के नाम से जाना जाता है। इसमें यह चुनौती दी गई थी कि पिछड़ी जातियों के लिए यह जो सरकारी नौकरियों में 27 फीसदी का आरक्षण घोषित किया गया है यह संवैधानिक नहीं है। सर्वोच्च न्यायालय को तो इसी विषय पर निर्णय देना था जो पिछड़ी जातियों से संबंधित आरक्षण था। लेकिन सर्वोच्च न्यायालय ने सारी आरक्षण नीति को ही उस विषय में सम्मिलित कर लिया। अनुसूचित जाति और जनजातियों के लिए जो आरक्षण चला आ रहा था उस विषय को भी सम्मलित कर लिया। आप जानते हैं, उपसभाध्यक्ष जी, आप भी अधिवक्ता रहे हैं। जब कोई भी फ़रीक़ से संबंधित विषय अदालत के सामने आता है तो उसी फ़रीक़ बनाया जाता है। मगर दुख की बात है कि उसमें ऐसा नहीं किया गया, अनुसूचित जाति और जनजाति के लोगों को वादकारी नहीं बनाया गया, पक्ष नहीं बनाया गया। नम्बर तीन-अगर नहीं बनाया गया तो जो लोग अपने आप पैरौकारी नहीं कर सकते हैं उनको सरकार अधिवक्ता मुहैया कराती है और उनका पक्ष न्यायालय के सामने प्रस्तुत होता है। लेकिन अनुसूचित जाति और जनजाति के लोगों को अपना पक्ष प्रस्तुत करने का अवसर नहीं दिया गया। चौथी बात—हमारे देश में यह परम्परा बन गई है कि अगर किसी वर्ग से संबंधित कोई विषय है और उसको तय करने वाले लोगों में अगर अमुक वर्ग का कोई व्यक्ति उपलब्ध हो सकता है तो उसे भी तय करने वाले संस्थान में बैठाया जाना चाहिए।

9 जजों की खंडपीठ बनाई गई और उसमें कोई भी अनुसूचित जाति और जनजाति का न्यायाधीश शामिल नहीं किया गया, जबकि के० रामास्वामी अनुसूचित जाति के सर्वोच्च न्यायालय में न्यायाधीश थे। पांचवी बात—सात मुद्दे, उस विषय से संबंधित प्रश्न, सुप्रीम कोर्ट के सामने आए और उनमें सातवां प्रश्न था कि प्रौन्नति में आरक्षण होना चाहिए या नहीं होना चाहिए। जस्टिस अहमदी जो बाद में मुख्य न्यायाधीश हुए उन्होंने अपने आप को उस विषय में संबद्ध नहीं किया यानी डिसर्ट किया इसलिए यह मैजारिटी जजमेंट भी नहीं था। वह सारा निर्णय अनुसूचित जाति और जनजाति के आरक्षण के खिलाफ हुआ। पहले केरीफारवर्ड सिस्टम था। जो जगह नहीं भरी है वह आगे चालू रहेंगी। न्यायाधीशों के इस निर्णय ने उसको समाप्त कर दिया । सो नौकरी होंगी तो आरक्षण नीति सौ में लागू होगी, लेकिन उन्होंने कहा कि ये 50 में लागू होगी। इसके अलावा उन्होंने जो सौ लोगों का कंसीडरेशन चला आ रहा था उसकी परिभाषा बदल दी। यही नहीं, अंकों की जो छूट थी उसे भी समाप्त कर दिया। यही नहीं, उन्होंने कुछ ऐसे क्षेत्र निर्धारित कर दिए कि जिनमें आरक्षण नहीं होगा, विज्ञान में नहीं होगा, तकनीकी शिक्षा में नहीं होगा, पायलेट सेवा में नहीं होगा, मेडीकल में नहीं होगा, इंजीनियरिंग में नहीं होगा, मैथमेटिक्स में नहीं होगा, इन कालेजों के दाखिले में भी नहीं होगा। सारा हित का अहित कर दिया। जो हमारे संविधान की रूह थी उसको सर्वोच्च न्यायालय ने नष्ट कर दिया। इसीलिए इस संसद ने उस निर्णय को नलीफाइड करने के लिए संविधान में संशोधन किया जो 16(4) (ए) के नाम से जाना जाता है। मैं सर्वोच्च न्यायालय का एक उदाहरण दे रहा हूं।

मान्यवर, हमारे यहां दो तरह से न्यायाधीशों की नियुक्ति होती है। निचले स्तर पर तो चयन से यानी वह परीक्षा द्वारा चयनित होता है। इसको लोग ज्यूडिशियरी कहते हैं। इनमें अनुसूचित जाति, जनजातियों के लिए आरक्षण है। नीचे के मुनसिब पद चयनित होते हैं और पदोन्नति से अधिकतम एडिशनल डिस्ट्रिक्ट जज तक पहुंच जाते हैं लेकिन दूसरी है हायर ज्यूडिशियरी। इसमें प्रमोशन पदोन्नति के अलावा अधिवक्ताओं में से जज चयनित होते हैं। अब तक भारतवर्ष की उच्च न्यायपालिका में, जितने अधिवक्ताओं में से जज चयनित हुए हैं उनमें अनुसूचित जाति, अनुसूचित जनजाति का एक भी जज नहीं हुआ। ये सभी अपर-क्लास के हुए हैं। खानदानी पेशेवर वकीलों के घर से हुए हैं। वकील इलाहाबाद उच्च न्यायालय का कानून मंत्री बना और बाद में उपराष्ट्रपति भी बन गया। उनके बेटे वहीं वकालत करते थे, वह उच्च न्यायालय में केवल न्यायाधीश ही नहीं बने बल्कि सर्वोच्च न्यायालय के न्यायाधीश बने और बाद में मुख्य न्यायाधीश बने। आज भी शायद संसार के किसी न्याय प्राधिकरण के मुखिया हैं। मैं उनका नाम नहीं लेना चाहता हूं। इस तरह से इसमें खानदानी लोग चले आ रहे हैं। उनकी पुश्तैनी विरासत बनी चली आ रही है। पदोन्नति का हिसाब जो चरित्र पंजिका में प्रवेश करते हैं । उस चरित्र पंजिकालय को एफिसिएंसी का एक मापदंड कहा जाता है।

महोदय, जस्टिस वी०आर० कृष्णा अय्यर और दूसरे जस्टिस का मैं नाम भूल गया उन्होंने एफिसिएन्शी की परिभाषा की थी कि एफिसिएंट अफसर कौन है। एफिसिएंट आफिसर वह नहीं है जो परीक्षा में सर्वोच्च नम्बर पाकर प्रथम स्थान पाये। सर्वोच्च एफिसिएंट आफिसर की उन्होंने परिभाषा की—he who is responsible and is a responsive officer, is efficient. जज एफिसिएंट कौन है, जो रेस्पांसिव है जो रेस्पांसिबल है और सही न्याय करता है। मैं भी आज से करीब 25 साल पहले अधिवक्ता रहा हूं। हर न्यायालय में एक बैनर लगाकर टांग दिया था कि वादकारी का हित सर्वोच्च है—litigant interest is supreme. 25-25, 30-30 साल से मुकदमे पड़े हैं। एक फैशन आ गया है जनहित याचिका का, पब्लिक इंटरेस्ट लिटिगेशन। अब कोई एक साधारण व्यक्ति जरा सी बात पर किस लिए चला गया कि भूतपूर्व संसद सदस्यों का पास निरस्त कर दिया जाए। ये जनहित याचिका हो गई और मामूली आदमी चला गया। माननीय न्यायाधीश महोदय जिनको न्यायमूर्ति कहते हैं, इसे तो तुरन्त निर्णय दे दिया और जमींदारी खातमा से बाद में करोड़ों एकड़ जमीन निकलकर के जो भूमिहीन खेतिहर मजदूरों में बंटती, आज भी स्टे आर्डर लगे पड़े हैं। वे मुकदमें तीस साल हो गये आज तक तय नहीं हुए। यह माननीय न्यायमूर्ति न्यायाधीश का न्याय है।

> "काजल की कोठरी में कैसो ही सया न जाए।
> एक लीक लागरी, काजर की लाग है, पर लाग है।"

हमारी न्यायपालिका भी इससे बची नहीं है। मेरे मित्र जब अपनी बात कह रहे थे, विप्लव दासं जी, तब वह औरों की भी बात कर रहे थे। जब हम सब की बात करते हैं तो हम अपनी भी आलोचना करते हैं। यह करें या न करें हम तो करते हैं। लेकिन इस समय हम केवल न्यायिक और एक राष्ट्रीय न्यायिक आयोग की बात कर रहे हैं और उस संदर्भ में मैं न्यायपालिका का जिक्र कर रहा हूं। महोदय, एक-दो मिनट में खत्म कर रहा हूं।

मान्यवर उपसभाध्यक्ष जी, जैसा कि गाडगिल साहब ने कहा था कि किसी की कोई जवाबदेही नहीं है। इस न्यायपालिका ने अपने पुराने निर्णयों को, वही परिस्थितियां हैं, लेकिन फिर भी बिल्कुल उलट कर दिया। अनेकों निर्णय ऐसे हैं। क्या बात आ गई? कौन सी परिस्थिति ऐसी पैदा हो गई जिसके कारण अपनी एक पूरी खंडपीठ ने जो निर्णय दिया और वह निर्णय उन्होंने बदल दिया, पूरे का पूरा बदल दिया। बड़े बड़े महत्वपूर्ण निर्णय होने चाहिए थे, लेकिन उनको नहीं किया। मैं एक उदाहरण देकर अपनी बात समाप्त करूंगा। उत्तर प्रदेश में विधान सभा और विधायिकी का एक विवाद खड़ा हुआ। वह मामला इलाहाबाद उच्च न्यायालय में गया। उस पर इलाहाबाद उच्च न्यायालय ने अपना निर्णय दिया और वह दिया, यहां पर राष्ट्रपति शासन लागू करने का। वह विवाद सर्वोच्च न्यायालय के सामने आया। सरकारें बदल गई, राष्ट्रपति शासन खत्म हो गया, चुनाव हो गया, लेकिन वह विवाद सर्वोच्च न्यायालय ने आज तक तय नहीं किया। यह संवैधानिक महत्व का था और जिसे प्राथमिकता के आधार पर तय होना चाहिए था। यह है न्यायपालिका के न्यायमूर्ति न्यायाधीशों का न्याय। यह क्या न्याय है? संवैधानिक संकट था इसलिए इसको सबसे पहले तय करना चाहिए था। इसलिए मान्यवर, जिस तरह से न्यायपालिका, कार्यपालिका और विधायिका के कामों में रोजाना दखलन्दाजी दे रही है यह उचित नहीं है। उसको यह देखना चाहिए कि न्यायपालिका का कार्य और उसका संचालन सही ढंग से हो और न्यायपालिका न्याय करे, इसमें कार्यपालिका और विधायिका की भी भागीदारी होनी चाहिए। इसलिए इस राष्ट्रीय न्यायायिक प्राधिकरण या आयोग के गठन, जिसमें एक पब्लिक के प्रतिनिधि और एक कार्यपालिका के प्रतिनिधि की बात कही गई है, जिसमें इन दोनों के प्रतिनिधियों का समावेश होगा, यह न्यायिक दृष्टि से सही होगा। इसलिए मैं इस विधेयक का समर्थन करता हूं।

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Sir, thank you for giving me this opportunity. Sir, the framers of the Constitution had anticipated that these three organs of democracy, the Judiciary, the Executive and the Legislature, their roles will be supplementary or complementary to one another. But, unfortunately, in recent times, I should say that Judiciary is trying to transgress its limits. When our friends say over-activism, there is a reason for saying so. When the other organs fail to discharge their duties in an anticipated way, definitely the other organ, the judiciary has tried to usurp the powers. That is where political executive has failed. So, the judiciary might be compelled to usurp those powers. Sir, what is the role of the judiciary? Can they give the guidelines or directions on how to run the Government? Can they interfere with the day-to-day administration of the Government?

Without taking into consideration the economy of the country and the finances of the States, they are giving directions to the Governments for implementing some schemes, making payment to some contractors, etc. To what exent, this action of the Judiciary is justified?

Sir, in today's newspaper I read about the Allahabad High Court Judgement which has removed the perquisites or privileges of ex-MPs. Some time back, there was a judgement of the Kerala High Court. The judges care more about their own perquisites, privileges and salaries. They don't care about other functionaries of democracy. Should the other functionaries of the democracy not live at subsistence level? Whatever the Judiciary says is sacrosanct. The judgements of the Judiciary are sacrosanct, and the decision of the Parliament which has got the mandate from the people are biased, prejudiced and policial! What is the logic behind this? Sir, I fully suppot this Bill. My friend, Dr. Biplab Dasgupta has made a suggestion as opposition Member... Tomorrow my friend may come to power also.

SHRI SANGH PRIYA GAUTAM: Never. Forget it. ...*(Interruptions)*....

SHRI C. RAMACHANDRAIAH: Sir, just by involving the elected people with any institution, we should not say that it is politicised. The association of politicians with any organisation does not pollute it. Sir, Indian polity does not consist of corrupt or prejudiced people. If a politician is elevated to the High Court or to the Supreme Court, he will become very clean. Then, his will becomes sacrosanct and his decision will be sac-

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rosanct. So long as he is in politics, his decision or will or action is biased. This impression has to be removed. There are still honest people in our political system. It is not the exclusive property of the Judiciary alone.

Sir, when I came to public life, there was one judgement of the Andhra Pradesh High Court in which the Legislature had summoned an editor of a newspaper for defamation. The Andhra Pradesh High Court granted a stay. There was a virtual confrontation between the Andhra Legislatue and the Andhra High Court. The top brass of the police were in jitters. They did not know whether to execute the orders of the Judiciary or the orders of the Legislature. So, this sort of an atmosphere has to be removed.

Sir, it is my privilege to support this Bill. It will remove arbitrariness in appointment and transfer of judges. It will also eliminate delays. Presently, it has been bogged down with many controversies. As a result, appointment and transfer of judges are delayed. It has also resulted in piling up of thousands of cases in various High Courts.

Sir, it will ensure proper representation of weaker sections and minorities in the judicial system. I therefore, support the constitutional amendment to amend articles 124, 217, 222 and 237 of the Constitution and insertion of article 307(a) which seeks to constitute a high-powered National Judicial Commission.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Mr. Vice-Chairman, Sir, today we are dealing with a delicate issue. One Constitutional wing is dealing with and discussing about another Constitutional wing. Therefore, we have to maintain the balance when we address this, even though there is no restriction to express whatever opinion we have. When we give some opinion, it does not mean that were in any way denigrating any individual in another Constitutional wing. We have to make that very clear. Sir, my friends have expressed their party views. There have been so many things that happened, as our learned friend has expressed. Castes factor has played an important role in the appointments. In the South—fortunately, he reminded me,—about twenty-five years back, if you go through the history of the appointment of Chief Justices of the Madras High Court, you will find that only the so-called upper caste people had occupied the posts of Chief Justice and Judges. They were able to come up. Only in the last twenty-five years, step-by-step, other communities also are able to enter the judicial arena. Yet, it has not been complete. When we are talking about these things, other factors also have to be taken into account. With due respect to the Members who have come from the judiciary to this House or to the other House, I say that once people retire from the judiciary, they should not come to the legislature. In the democratic set up, legislative wing, executive wing and judicial wing are working separately. If a judge, after retirement from a particular high post, comes to the legislative wing, then whatever judgements he delivered during his service though with neutrality, will be subjected to suspicion. Therefore, I feel, once the judges retire, they should not try to come to legislative or some executive powers.

SHRI SANGH PRIYA GAUTAM: Particularly Chief Justices.

SHRI S. VIDUTHALAI VIRUMBI: That also can be added.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): The matter is *sub judice*.

SHRI S. VIDUTHALAI VIRUMBI: Which one, Sir? What I said now? *(Interruptions)*?

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Because somebody else commented upon this and for that I am saying.

SHRI S. VIDUTHALAI VIRUMBI: Sir, in Ireland, there is a mechanism called Council of States. Our House is called the Council of State. In Ireland

there is a Council of State. It consists of the President, Prime Minister, Chief of Staff of Army, retired Chief Justices etc., all eminent people. In the Council of State, nationally important issues are debated. There will not be any party bias. They will come to a conclusion and then it will be left to the discretion of the President. After consulting the Council of State the President may decide. But, there is no such thing in India here. When the Constitution was drafted, when such a proposal was placed before the Constituent Assembly, it was negated by its Members, particularly from some group. What they might have thought was once such a thing come into existence then automatically their own powers would be eroded. That is why they might have stopped it. That is why this could not come into being here. Had it been like that, this type of situation would not have arisen. This is my impression.With regard to the transfer of judges, I wanted to say something. The transfer of judges was initiated with some good faith, taking into consideration the multi-lingual nature and multi-racial nature of our country. It is like a sub-continent.

Earlier the transers of judges used to take place keeping in view the unity and integrity of the country. Now the execution of transfers has more or less gone into the political arena. The judges should not be transferred on the eve of their retirement. In any case if they have to be transferred, they should be transferred to those places to which they belong. This is the way in which we can transfer judges on the eve of their retirement.

THE VICE CHAIRMAN (SHRI SANATAN BISI): Mr. Virumbi, your party has been allotted three minutes to speak on this subject.

....*(Interruptions)*... you have already ....*(Interruptions)*...

SHRI VIDUTHALAI VIRUMBI: Sir, I have just started to speak. Usually, we get 15 minutes. Sir, Please be considerate...*(Interruptions)*... A very few Members have given their names to speak on this subject. Kindly be considerate. ...*(Interruptions)*... Sir, on the eve of their retirement, if they are transferred somewhere else, it is not a proper thing. Sir, in many cases the judgements are reserved. If a judge is transferred or is elevated on some political consideration, then these reserved judgements can also be affected. Therefore, in the matter of transfers, we have to take proper care. There should not be any suspicion in the minds of people that these transfers are taking place out of some political consideration. This type of transfers should not be there. This point has to be taken care of. The other point which I want to mention is with regard to appointment and transfers of judges. My learned friend has suggested that there should be a National Judicial Commission. He says that a National Judicial Commission should be constituted. I feel that this is not a small matter which can be decided immediately.

Sir, this is a Private Member's Bill and the other parties would also like to give their views on this matter. I feel that this idea of constituting a National Judicial Commission is very good and it deserves consideration. A message should go to the other House also. The Chairman of the Rajya Sabha and the Speaker of the Lok Sabha can discuss this matter with each other. If they feel it necessary, then they can constitute such a Commission consisting of the leaders of all the political parties of this House and the other House. If they feel that it is necessary, then they can proceed with this matter. I feel that the judiciary is entering the executive. In the same way, the executive can also enter the field of judiciary. The executive can also be intruded in the judiciary.

Sir, the Central Government is taking a different view or it has a different perception on the same issue in different courts. This is the point which I want to mention here. They are taking a different

view in the matter of constituting Special Courts or additional Courts. The same Central Government has taken a different stand in one case. I do not want to mention the name of the case. I do not want to name the court also. I would like to tell you only about how the Central Government deviates on the same issue. I would like to quote notification here. "It is left to the State Government to group all cases for the purpose of notification. The State shall be in a better position to judge the needs and exigencies of the State. In this case, the State Government appears to have made it clear that it was felt necessary in larger public interest that steps had to be taken expeditiously to try a group of cases by appointing more special judges since the regular courts dealing with such cases were over-burdened with the existing workload. Therefore, neither the notification issuec by the State Government, nor section 3 of the Corruption Act, 1988, can be held to be invalid or *ultra vires* of the constitution of this court because the case with whom it has to be dealt with and the judges who have to be appointed are all decided by the court not by any Government; not by the executive. It has to be decided by the judiciary." Sir the same Central Government what it had said in one court said exactly the opposite in the other court. It is like the North Pole and the South Pole. The same Central Government had given another opinion in the Supreme Court. In the High Court, they have said a different thing. In the Supreme Court, they have said, "The records disclose that on 30.04.1997, there existed for the city of Chennai more special courts than one; and, in such an event, only the Central Government could have specified which of the special judge would try the case and such a power can be exercised by the Central Government only in consultation with the Chief Justice of the High Court. The Government is considering the action in the matter in accordance with the law." Without going into the merits and de-merits of the case, my argument here is this. My learned friend says that the judiciary is intruding into the executive. My complaint is, the executive, unnecessarily, takes different stands—one in the High Court and another in the Supreme Court—on the same issue. Do you think the judiciary will continue in our country?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SURFACE TRANSPORT (SHRI M. THAMBI DURAI): Mr. Virumbi, will you yield for a minute? Sir, the hon. Member is raising certain issues. Actually, now, this matter is in the court.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): No, no. He is speaking on the matter of principles ...(*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Sir, I am not quoting any case ...(*Interruptions*)...

SHRI M. THAMBI DURAI: The point which he has raised just now is in the Supreme Court ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): If the matter is in the court ...(*Interruptions*)... *sub judice* matters will not go on record ...(*Interruptions*)... If the matter is *sub judice,* it will not go on record ...(*Interruptions*)... That is number one. Number two is, you can speak on principles ...(*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Sir, I request that if you find anything *sub judice,* you can decide according to the rules and procedure of the House ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): On principles, you can say ...(*Interruptions*)... Please conclude ...(*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Without going into the merits and de-merits of the case, I would like to submit that if the executive takes two different stands, how justice would be rendered to

the people who are affected by the action? ...(*Interruptions*)...

SHRI M. THAMBI DURAI: Sir, the hon. Member is saying that the Central Government was taken one stand earlier and now, it has taken a different stand. This is his argument.

SHRI S. VIDUTHALAI VIRUMBI: It is the executive.

SHRI M. THAMBI DURAI: Yes. It is the executive ...(*Interruptions*)... It is the Central Government or the executive ...(*Interruptions*)... Sir, what is wrong in it? Suppose, if the previous Government had taken a wrong decision ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): It is a question of principle ...(*Interruptions*)...

SHRI M. THAMBI DURAI: I am not going into anything ...(*Interruptions*)...

SHRI C.P. THIRUNAVUKKARASU: Question of estoppel is there ...(*Interruptions*)...

SHRI M. THAMBI DURAI: I am only saying about the Govenrment's stand. I am giving clarification on that. If at all, suppose, the previous Government or somebody had interpreted wrongly, after finding it out, if the next Government changes it to a right direction, what is wrong in that? That is all I wated to say.

SHRI S. VIDUTHALAI VIRUMBI: These changes taken place within three months ...(*Interruptions*)...

SHRI M. THAMBI DURAI: Let it be even one month ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Please, conclude ...(*Interruptions*)... Your time is over ...(*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Sir, I am not talking about the merits or de-merits of the case ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): That is over.

SHRI S. VIDUTHALAI VIRUMBI: I am not talking about a the merits or de-merits of the case. What I am saying is, the Act is the same, the rules are the same and the officiers are also the same. I want that they should act according to the rules and Acts of the country ...(*interruptions*)...

SHRI VICE-CHAIRMAN (SHRI SANATAN BISI): Please conclude ...(*interruptions*)...

SHRI M. THAMBI DURAI: The right action is going to prevail. That is all ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Now, please conclude ...(*interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: If the Government of India plays two different roles, how justice would be rendered? ...(*interruptions*)...

SHRI M. THAMBI DURAI: Nobody can break the rules ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Virumbi, please, take your seat ...(*interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Sir, my last sentence is ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): What is that last sentence? ...(*interruptions*)... you have already taken more time ...(*interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Regarding this Bill ...(*interruptions*)... I have explained about the Bill.

THE VICE-CHAIRMAN: (SHRI SANATAN BISI) you have already explained about the Bill ...(*interruptions*)... You have taken more time. Please conclude ...(*interruptions*)... You have talked about the Judicial Commssion ...(*interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: For the Judicial Commission an all party

meeting should be convened and opinion has to be taken ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): That you have already said ...(*interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Then we have to decide about it. That is all I wanted to say. Thank you.

SHRI JOHN F. FERNANDES (GOA): Sir, this is for the first time in the history of democracy that the judiciary, in India, used the power to appoint themselves; by the Supreme Court judgement of 1993. There is no such precedence anywhere in the world. In the history of democracy, no such precedence exists anywhere. The hon. Supreme Court in 1983, rightly or wrongly, gave a judgement. I want to ask the Government can the Supreme Court sit in judgement and use the power for itself? Was it appropriate for the Government to refer this matter to the Law Commission? I want to know from the Government whether there is any recommendation from the Law Commission. ...(*interruptions*)... It would have been appropriate for the Government, if the recommendation of the Law Commission was there to react to it, and not to leave it to the Supreme Court to give a judgement. This Bill was introduced in Parliament in December 1986 by my colleague, hon. Gadgilji. Subsequently, judgements were given by the Supreme Court. The latest judgement is in regard to the Chief Vigilance Commissioner—as to who will appoint him. I think that will be the appropriate forum to appoint judges of the Supreme Court and the High Courts. The latest judgement, in question, indicates that there will be a Committee not the National Judicial Commission, but a Committee—consisting of the Prime Minister, the Leader of the Opposition and various other people concerned with those appointments. We know that article 124—Part IV and article 217—Part V of the Constitution state that the power to appoint the Chief Justice of the Supreme Court and the High Courts vests with the President of India; of course, in consultation with the State Government. The 'President' naturally means the executive; and the 'executive' means 'Cabinet', and the advice of the Cabinet is binding on the President. That is how we have amended the Constitution. So, I think, it would have been appropriate to have the National Judicial Commission, not as per the proposed article 307 (A), Part XIII of the Constitution, as mentioned by my colleague because Part XIII deals with trade and commerce. If you read Part XIII, it deals only with trade and commerce. It deals with inter-state trade. So, I think, it would be appropriate to have the National Judicial Commission under Part IV of the Constitution, within the judicial ambit of the constitutional powers of the President. I do not know what is the view and the opinion of the Government now. In view of the subsequent judgement, will the Government come forward with a legislation to have a statutory body, the National Judicial Commission? Off and on I speak on the subject because I take interest in the subject. Nowadays, we hear of judicial activism. We have a system which has failed. So many systems have failed. The executive has failed. We have seen so many scams. The judiciary also has failed. I do not think I am committing any contempt of court. The Law Commission has rightly mentioned about a code of conduct for the judiciary. Just like political parties have a code of conduct, the Law Commission has given a code of conduct for the judiciary. It is appropriate for the judiciary to discipline itself. This recommendation, pertaining to a code of conduct for judiciary, was referred to the hon. Supreme Court by the Government of India in 1993. This is for the third time that I am asking the Government as to what happened to that recommendation of the code of conduct for the judiciary. The Parliament is functioning within a statute. We have a Constitution. We have rules, framed by this House. Similarly, a mechanism should also exist for the judiciaary to function.

They also have to have some code of conduct, some rules and regulations to guide them. Just because we have given them the Constitution, they cannot themselves interpret it as they like. Today I was told that there was a judgement by the Allahabad High Court where by the railway passes for the ex-MPs have been nullified. If they took a decision just to retain the legislation, I do not think we should go in for a confrontation. I hope the hon. Minister will see to it that they bring an appropriate legislation taking a view of the latest recommendations (1998) of the hon. Supreme Court. I would be very happy if the hon. Law Minister reacts to my query as to what the Government has done in regard to a code of conduct for the judiciary, which they have recommended back to the judiciary for its comments. Thank you.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): My learned friend, Shri Viduthalia Virumbi, said that one sort of affidavit has been filed in a High Court and another sort of affidavit has been filed by the Government. ...(*interruptions*)... I wil take one minute only. ...(*interruptions*)... My submission is that ...(*interruptions*)...

SHRI R.K. KUMAR: How is it relevant; ...(*interruptions*)....

THE VICE-CHAIRMAN (SHRI SANATAN BISI): So far as this matter is concerned, please speak only about articles 124 to 127. ...(*interruptions*)...

SHRI C.P. THIRUNAVUKKARASU: I have one line ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): on which line?

SHRI C.P. THIRUNAVUKKARASU: The Government is not expected to appropriate and reappropriate. They are stopped from contending at different stages. ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Those are the principles which he is saying. ...(*interruptions*)...

SHRI C.P. THIRUNAVUKKARASU: My submission is this. ...(*interruptions*)... A layman roaming on the street can say anything, appropriate and reappropriate. You cannot stop him from saying things. The Government is not expected to say that. They have to abide by the rules and by the governance. That is why, the Ministry of Law and other Attorneys-General are not expected to say that. That is my submission. ...(*interruptions*)... I will come to the point.

SAHRI M. THAMBI DURAI: I never said that.

SHRI C.P. THIRUNAVUKKARASU: A judge of the Calcutta High Court retired recently. He purchased three pairs of spectacles for a sum of Rs. 37,000/-. He claimed the bill saying, 'I am entitled to that.' It was written, "No, vou are claiming exorbitantly." he said, "I can claim unlimitedly. And I am equivalent to a Minister of Cabinet rank. So, I am entitled to spend even Rupees One Lakh". But the people who are roaming on the streets and the Members of the Parliament, including me, are wearing spectacles worth about Rs. 300, Rs. 400 or Rs. 1000/-. But these spectacles were purchased by a judge of the Calcutta High Court for a sum of Rs. 37,000/- and he has made a claim. This sort of judges pass an order, as Mr. Fernandes and my other friend had said that a the ex-MPs are not entitled to the benefit of going in a train. Also, the Kerala High Court made an injunction whereby MPs have been restrained from giving gas coupons and telephone connections. I have made a confirmation that as far as gas connections are concerned, all MPs are issued 700 gas connections per month. Because. ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): What have you to say regarding this matter?

SHR C.P. THIRUNAVUKKARASU: I will submit ...(*interruptions*)...

THE VICE-CHAIRMAN (SHRI SANATAN BISI): You visualised that. ...*(interruptions)*...

SHRI C.P. THIRUNAVUKKARASU: So, if this sort of injunction has been imposed by the judges, there may not be any remedy.

I straight a way come to the proposed provisions of Article 307 (a). The National Judicial Commission shall consist of the Chief Justice of India, two judges of the Supreme Court next to the Chief Justice of India in seniority; a senior Member of Parliament with legal background to be nominated by the Speaker of the Lok Sabha; and the Union Minister of Law and Justice. As far as these two provisions are concerned, I am not totally in agreement with them. The reason is this. In India, there are 26 Supreme Court judges, there are 18 High Courts and there are 415 judges there. If this thing is allowed to enter into the legislation, that is a different thing. Sometimes, the Union Law Minister excercieses a decisive authority, and at another time the Chief Justice of India makes a final decision. Repeatedly, compromises are made, accommodating a few men of the Chief Justice and a few men of the Government. So, if it is allowed to remain in the letter and spirit of this amended law, the senior Member of parliament will have one Member, the Union Minister will have another Member, the Judges will have another Member and the Chief Justice of India will have another Member. So, a compromise will be made, and different political colours will come into the picture. So, this should be avoided. This is what I submit.

Thank you for the opportunity that has been given to me.

SHRI KAPIL SIBAL (Bihar): Mr. Chairman, Sir, I am grateful to you for having given me this opportunity to talk on a subject that is very close to my heart.

Sir, I endorse the constitution of a National Judicial Commission because I do believe that the experience that we have had in the last ten years calls for an entire review of the appointment process of Judges to the higher judiciary in this country.

Sir, as you are aware, under the Constitution as it was originally interpreted in the Transfer of Judges Case, it is the Government which is entitled to finalise the names of those who are going to be elevated to the higher judiciary. Because of some misgivings, not because the constitutional provision is not workable but because of the fact that the constitutional provision had not worked appropriately, a petition was filed in the Supreme Court by what is called the "Advocates-on-Record Association" of the Supreme Court, in which a reivew was sought of the entire process of appointments to the higher judiciary. Ultimately, the Supreme Court in that case decided that the final authority in the appointment of Judges to the higher judiciary was the Supreme Court; Hon. Judges of the Supreme Court. That judgement, as you are aware, has recently been clarified pursuant to a reference made by the President of India in respect of some grey areas that were left over.

But, Sir, I have really an issue of principle that I want to raise here today. I entirely support Mr. Gadgil in proposing the consitution of a National Judicial Commission becasue I do believe that the time has come for us to ensure that the superior judiciary of this country is also accountable to somebody. Everyday we hear in courts references being made to politicians in this country, and every time in a court of law there is a reference to an hon. Member of this House or of the Lok Sabha, there is a snigger around court that we hear; as if each one of us is trainted.

We, hon. Memebrs of this House are a ccountable to the people of this country. We are subject to prosecution. We are subject to proceedings against us. I dare say that none of us is above law. But, unfortunately, there is a feeling that

is going around in this country that each one of us is tainted. I am sorry to say that the judiciary has, unfortuntely, taken note of that propped-up public sentiment through the media. Public interest litigations are filed day in and day out on a mere suspicion, and courts find it very handy and easy to proceed against politicians. I think, Sir, this trend must stop. Institutionally, we have the greatest respect for the judiciary.

5.00 P.M.

We expect that institutional respect that we give to them should be reciprocated in equal terms.

Now, Sir, how do we go about setting up this National Judicial Commission, The Bill, which Mr. Gadgil has moved, does not mention as to what should be the constitution of the Natonial Judicial Commission.

SHRI SANGH PRIYA GAUTAM: He has given.

SHRI KAPIL SIBAL: I am soryy.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Sibal, it is now 5 o'clock. You continue in the next session.

SHRI KAPIL SIBAL: Yes, Sir. I will.

SHRI SANGH PRIYA GAUTAM: He has not mentioned as to who should be the Chairman.

SHRI KAPIL SIBAL: That is what I was going to comment upon. I will take it up in the next session.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Now, we take up the other business.

SHRI A. VIJAYA RAGHAVAN: Sir, most of the Congress benches are empty.

SHRIMATI KAMLA SINHA: So, let us continue on Monday.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): In the morning it was decided that the House should continue up to 6 p.m.

SHRIMATI KAMLA SINHA: Not today, Sir. From Monday onwards.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): No, from today onwards.

SHRIMATI KAMLA SINHA: No, Sir. This will be unfair. Most of the seats are empty. If you count the heads, there will be no quorum also.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): In the morning we had taken a decision...

SHRI S. VIDUTHALAI VIRUMBI: We were told that from the next week Government and Legislative business will take priority.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Virumbi, will you take your seat? In the morning the Chairman decided...

SHRI S. VIDUTHALAI VIRUMBI: I was also in the Chamber.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): I may inform the House—it is up to the Members—that the Business Advisory Committee had recommended that the House should sit up to 6 p.m. and beyond each day as and when necessary for the transaction of Government and other legislative business. So, it is up to the Members.

SHRIMATI KAMLA SINHA: As and when necessary. Today it is not necessary, because there is no quorum.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): So, I adjourn the House. The House is adjourned till 11 a.m. on Monday, the 21st December, 1998.

The House then adjourned at four minutes past five of the clock till eleven of the clock on Monday, the 21st December, 1998.